



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant: Eric Lovett et al.

Title: MEDICAL DEVICE HAVING RHEOMETRIC MATERIALS AND METHOD THEREFOR

Docket No.: 279.262US1

Serial No.: 09/970146

Filed: October 2, 2001

Due Date: May 14, 2004

Examiner: Kennedy Schaetzle

Group Art Unit: 3762

Commissioner for Patents

Mail Stop: Amendment

P.O. Box 1450

Alexandria, VA 22313-1450

We are transmitting herewith the following attached items (as indicated with an "X"):


☒ A return postcard.

☒ A Response to Non-Compliant Amendment (3 pgs.).

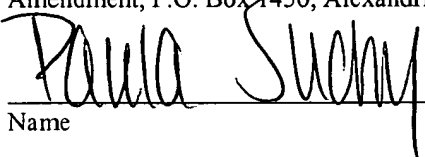
If not provided for in a separate paper filed herewith, Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers and please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

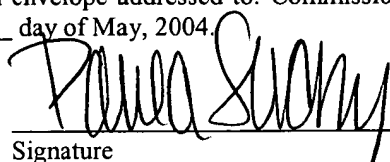
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

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By:   
Atty: Thomas C Obermark  
Reg. No. 55,506

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

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S/N 09/970146

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Eric G. Lovett et al.

Examiner: Kennedy Schaetzle

Serial No.: 09/970,146

Group Art Unit: 3762

Filed: October 2, 2001

Docket: 279.262US1

Title: MEDICAL DEVICE HAVING RHEOMETRIC MATERIALS AND METHOD  
THEREFOR

RESPONSE TO NON-COMPLIANT AMENDMENT

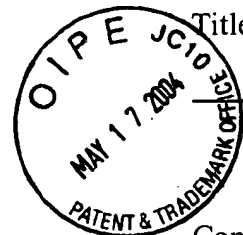
Commissioner for Patents  
Mail Stop: Amendment  
P.O. Box 1450  
Alexandria, VA 22313-1450

This responds to the "Notice of Non-Compliant Amendment" dated April 14, 2004, regarding Applicant's previously submitted "Response to Restriction Requirement", dated January 21, 2004, to the Restriction Requirement dated November 21, 2003.

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**RESPONSE PROPERLY ELECTING SINGLE DISCLOSED SPECIES**

Applicant has reviewed the Notice of Non-compliant Amendment. In compliance with the Notice of Non-compliant Amendment and the Restriction Requirement, Applicant elects without traverse to prosecute the species for an elongate medical device, including rheometric material associated therewith.

Applicant further elects to prosecute the species recited above that includes the following subspecies: a strip of rheometric material wound around a longitudinal axis of the device body; where the rheometric material includes an electroactive polymer; where at least one assembly is disposed adjacent to the distal end of the device body; where energy is applied to each assembly at different times; where selectively varying the stiffness of the device body includes bracing the device body against movement; and where selectively varying the stiffness of the device body includes moving the device body within a passage. Applicant respectfully submits that claims 1, 3-10, 12-14, 16, 21-23, 26, 28, 29, 33, 38, 39, 41-43, 45-48, 50, 51, and 57 read thereon, with at least claims 1, 9, 23, 28, 38, and 50 being generic.

Applicant reserves the right to traverse the Restriction Requirement. Applicant is unclear as to the identity of the species. According to the Office Action, first paragraph, "Due to the large number of possible embodiments, it is not practical to list each and every possible combination of subspecies." Applicant respectfully submits, the Office Action dated November 21, 2003 and the Notice of Non-compliant Amendment dated April 14, 2004 fail to list any species. Pursuant to M.P.E.P. § 809.02(a), the Examiner should "clearly identify each (or in aggravated cases at least exemplary ones) of the disclosed species, to which claims are restricted." Applicant respectfully submits the Office Action has not identified *any* species, exemplary or otherwise, for election by Applicant. Applicant respectfully requests the Examiner provide species for election, as required by M.P.E.P. § 809.02(a), or withdraw the Restriction Requirement.

**RESPONSE TO NON-COMPLIANT AMENDMENT**

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Conclusion

Because no species have been identified and Applicant lacks clarity as to the identity of the species, Applicant respectfully requests a telephonic interview to facilitate prosecution of this application. The Examiner is invited to telephone Applicant's attorney at (612) 371-2117.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

ERIC G. LOVETT ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

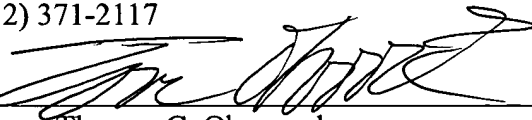
Minneapolis, MN 55402

(612) 371-2117

Date

5/14/04

By

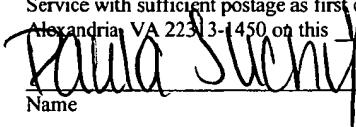


Thomas C. Obermark

Reg. No. 55,506

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Name



Signature

